THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 10951 of 1998

DATED: 13.06.2007

Between:-

Ch.M.V.Satyanarayana s/o Ch. Meera, aged 32 years, occ: Attender, R/o H.No. 9/741, Balarampeta, Machilipatnam, Krishna District.

..PETITIONER

And

The Chairman/District Collector, Krishna District Scheduled Caste, Co-op. Society Ltd., Machilipatnam, Krishna District and another.

…RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 10951 of 1998

O R D E R

Petitioner herein seeks a writ of Mandamus to declare the order of the 1st respondent dated 24.03.1998 as illegal and arbitrary.

Pursuant to the directions of this Court in W.P. No. 19559 of 1997 dated 19.08.1997, the respondents considered the case of the petitioner. In the order impugned in this writ petition, the 1st respondent states that since the formation of the Engineering Wing 15 N.M.R attenders were working in the division and that, pursuant to the orders of this Court, 12 N.M.R. attenders were given time-scale of pay. After careful consideration of the case, and the claim of the petitioner for regularization of services, his request was rejected, as (1) under G.O.Ms.No.200 SW (SCP-II) Department dated 12.09.1985 the sanctioned strength of attenders was 11, whereas the petitioner was above the sanctioned strength, (2) that as per G.O.Ms.No. 267/SCP-II/85-3, dated 12.09.1985 there is no possibility for making regular appointments to any post in the Engineering Wing. (3) that as per Circular dated 09-03-1996, the staff working in Engineering Wing were not entitled for regularization, (4) that as per G.O.Ms.No.212, dated 22.04.1994, an N.M.R./daily wage worker could be regularized only if he was working in a sanctioned post and had put in more than 5 years of continuous service by 25.11.1993, (5) that the petitioner had joined on 01-04-1989, had put in service of 4 years 6 months and was

working in excess of the sanctioned strength and (6) the P.S. and M.S. charges in the Engineering Wing were running in minus balance. The 1st respondent also stated that no other N.M.R. attender had been allowed time scales of pay or regularized after the petitioner had joined and hence his case for regularization was rejected.

Sri Kowturu Vinaya Kumar, learned counsel for the petitioner, would place reliance on a Division Bench Judgment of this Court in **SECRETARY, A.P. SOCIAL WELFARE RESIDENTIAL EDUCATIONAL INSTITUTIONS SOCIETY, HYD AND OTHERS V. P. VENKATA KUMARI**[1], to submit that the services of an NMR, who has put in 5 years of continuous service, even if it be after cut-off date of 25.11.1993, was required to be regularized, that as long as he complied with twin conditions of (1) having completed five years of service and (2) having been employed as on 25.11.1993, he satisfied the requirements of G.O.Ms.No. 212 dated 22.4.94. Learned counsel would submit that, though the petitioner did not complete five years of service as on 25.11.1993, he was entitled to be considered under G.O.Ms.No. 212, dated 22.4.1994 since he had completed five years of service before the impugned order was passed and was also working as on 25.11.1993.

While this submission of Sri K. Vinaya Kumar cannot be said to be without merit, the fact remains that G.O.Ms.No. 212, dated 22.4.1994 also provides that a person can be regularized only in available vacancies. It is clear from the impugned order that the sanctioned strength of attenders was 11 and the petitioner was above the sanctioned strength. As such, the order of the 1st respondent, in rejecting his claim for regularization in view of the bar under G.O.Ms.No. 212 dated 22.4.1994, cannot be faulted.

Sri K. Vinaya Kumar, learned counsel, would however refer to paragraph-5 of the affidavit filed in support of the writ petition to contend that the 1st respondent had regularized the services of the 12th candidate viz. N. Suresh Kumar and, therefore, the sanctioned strength was not a criteria for regularization.

It is necessary to note that the petitioner has not chosen to implead the said N. Suresh Kumar as respondent in the writ petition nor is it his case that he was senior or had rendered more service than Sri N. Suresh Kumar. Even assuming that Sri N.Suresh Kumar was regularized, despite his being the 12th candidate and not falling within the sanctioned strength of 11, it is well settled that no Mandamus can be sought to perpetuate an illegality. The mere fact that Sri N. Suresh Kumar was illegally regularized would not confer any such similar right on the petitioner. As has been held by the Supreme Court in **Secretary, State of Karnataka and others v. Umadevi and others**[2], no mandamus would, normally, be issued for regularization of services of an employee merely on account of his having rendered services as a daily wage employee. In the present case the petitioner is not even eligible under the scheme of regularization prescribed under G.O.Ms.No. 212, dated 22.4.1994 and is, therefore, not entitled to the relief sought for. The writ petition fails and is, accordingly, dismissed. No costs.

RAMESH RANGANATHAN, J

Dated: 13.06.2007
vp

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[1] 2001 (4) ALD 368 (DB)
[2] 2006 (4) SCC-1